FRONT Report LINE

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OPERATION LAM SCAM

Sting nabs fugitives

A six-day undercover sting operation conducted by Attorney General **Jay Nixon** and Jefferson County Sheriff **Glenn Boyer** bagged 143 persons wanted by Jefferson County authorities on a variety of charges.

Included in the arrests were 40 felons. The sting operation also cleared 218 warrants.

In Operation Lam Scam, the AG's Office sent a letter to fugitives informing them they either were due a rebate from the state for a tax credit or were eligible for cash awards as the result of a class-action lawsuit brought by the AG's Office.

The letter instructed recipients

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Photo not available

Photo not available

BUSTED: Jefferson County officers (above) arrest a woman wanted on a warrant. From left are Cpl. **Donna Thomas** and Deputies **Joe Fisher, Craig Vaughn** and **Jack Todd** (partially hidden). AG **Jay Nixon** (left, in foreground) and Sheriff **Glenn Boyer** announce results of the Lam Scam at a news conference in Festus.

New hot-pursuit law broadens officers' powers

NEW LIMITS

The September Front Line article on the 8th Circuit's decision in *Abbott v. City of Crocker* generated several questions by law enforcement officials.

The case dealt with a municipal peace officer who made an arrest outside his city limits. The court suggested making an arrest in another jurisdiction could be an "unreasonable seizure" and, therefore, could be unconstitutional.

The most often asked question was how does the new hot-pursuit statute affect this case.

SEE HOT PURSUIT, Page 4

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AG TEAM TAKES POLICE TO COURT

The AG's basketball team and the Grandview Police Department went to court recently and presented a convincing case that the AG players were the top team. The on-court judgment: 101-91. "We had a great time playing in the DARE benefit for Grandview," AG **Jay Nixon** said. "Now that they've had a chance to rebound, we're ready to go back to court with Police Chief **Robert Beckers** and his squad. The AG's team players are front from left: **David Hansen, John Borbonus, John Banjak** and Front Line Editor **Ted Bruce.** Back row: **Steve Siegler, Nixon, Tim Anderson, Doug Ommen, Norm Siegel** and **Bill Bryan.**

Child sexual assault cases

Federal rules of evidence change

One provision of the federal crime bill changes portions of the Federal Rules of Evidence regarding child sexual assault cases.

Under Federal Rules 413-415, a defendant's past similar acts of sexual misconduct will be admissible in civil and criminal cases involving sexual assault or child molestation. This information will be extremely important for state and federal prosecutions of sex offenses against children.

The federal changes are similar to those made in the sex-crimes bill by the Missouri Legislature.

OPERATION LAM SCAM

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to contact "Pat Thomas," director of the Missouri Department of Public Services, to schedule an appointment to pick up their checks. The name and department are fictitious.

A temporary claims office was set up in Festus in November with sheriff's officers staffing the reception area and deputies making arrests in an adjoining room.

"The Attorney General's Office provided the logistical support and behind-the-scenes manpower to lend credibility to the project and to get it up and running," Sheriff Boyer said.

Law enforcement agencies interested in conducting their own stings can call assistant attorney general **John Watson** at 314-751-0380.

"The sting's success shows what can happen when law enforcement agencies work together in the fight against crime," Nixon said. "Boyer and his crew did a great job."

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UPDATE: CASE LAWS

WESTERN DISTRICT

State v. Willie R. Mayes
No. 46433
Mo.App., W.D., Oct. 4, 1994

The trial court did not err in refusing to grant a mistrial when the state's witness testified that a shotgun was recovered during a search of the defendant's house. The defendant was charged with two counts of sale of a controlled substance.

While the court admonished the jury to disregard the gun, it was unnecessary. The gun's presence was relevant to show the defendant knew the substance sold immediately prior to police entering the house was the contraband PCP.

Also, a detective was allowed to testify as a narcotics expert. The detective testified, without objection, about PCP production, the forms of PCP and how PCP is sold and priced.

Relying on *State v. King*, 865 SW2d 845 (Mo.App. 1993), the court noted that trial judges have a lot of discretion in determining whether expert testimony is appropriate.

State v. Richard D. Herrington
No. 47803
Mo.App., W.D., Oct. 4, 1994

The trial court did not abuse its discretion in admitting testimony of a sergeant who testified nine days after a robbery that he recovered a loaded handgun from the driver's side-door compartment of the car in which the defendant was reclining.

The testimony was relevant to establish the accused's identity and the availability of a weapon. The victim identified the gun as one used by the defendant in the robbery.

The court rejected the defendant's argument that he was willing to stipulate the sergeant found a gun in his possession. The state has the burden of proving the defendant's guilt beyond a reasonable doubt and cannot be limited by the defendant's willingness to stipulate.

EASTERN DISTRICT

State v. Paul Harper
No. 63374
Mo.App., E.D., Sept. 16, 1994

The state proved there was sufficient evidence of the defendant's guilt of stealing by deceit when he developed a scheme to sell dance lessons to students.

Students were encouraged to buy more dance lessons before they had completed their first set of lessons.

The company's manual included no programs for advanced lessons.

The evidence supported a finding that once students stopped buying new lessons, the defendant immediately cut off all of the students' lessons and offered no refunds.

The crimes were committed the moment the defendant received payment for lessons, knowing students would never receive them.

State v. James Smith
No. 65403
Mo.App., E.D., Sept. 27, 1994

There was sufficient evidence of the defendant's guilt of driving while intoxicated after he collided with another vehicle.

The trial court did not err in refusing to instruct the jury on the defense of justification by necessity.

The defendant claimed that driving the car after his wife left it parked on a highway was "necessary as an emergency measure to avoid an imminent public or private injury" and thereby was justifiable under Section 563.026, RSMo 1986.

Assuming the defendant was drunk when he drove the car, the defendant could have avoided the necessity of violating the law by resolving an argument with his wife. Also, the defendant's father was in the car.

The trial court did not err in denying a mistrial after a state trooper testified the defendant asked to be given a break to avoid being imprisoned again. The statement manifested a consciousness of guilt.

The trooper simply was relating the complete story of the defendant's arrest. There was nothing in the record suggesting any insidious motive by the prosecution.

The trooper was properly allowed to give his opinion that the defendant was intoxicated. There also was no evidence the defendant drank any alcohol after the collision and before he was questioned. The defendant himself had insisted he had not done so.

Therefore, the defendant's appearance, demeanor and his failure of field sobriety tests administered by the trooper were relevant factors corroborating the witnesses' opinions that the defendant was intoxicated at the time of the collision.

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UPDATE: CASE LAWS

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SOUTHERN DISTRICT

State v. Randy L. Warrington
No. 18674
Mo.App., S.D., Sept. 29, 1994

The trial court did not err in denying the defendant's motion to suppress marijuana on the basis the stop of a car was pretextual and not justified by reasonable suspicion.

There were specific and articulable facts that the deputy had a reasonable suspicion the defendant was involved in criminal activity.

The defendant had approached an undercover officer and asked if he wanted to buy some "smoke," slang for marijuana.

The defendant then drove the undercover officer to Jasper County. The officer got out at his brother's house and a phone call was made to another deputy about the deal. The defendant stayed in the car.

The notified deputy then followed the car and stopped it for faulty lights. When he approached the car, he could smell marijuana. After receiving permission to search the car, 14 bags of marijuana were found.

While the deputy conceded on the motion to suppress that his real reason for stopping the car was the telephone call, the court found this was not pretextual. The deputy knew the agent was working undercover and he also knew the defendant.

In a prosecution for possession of more than 35 grams of marijuana, the court did not err in refusing to submit a lesser-included offense instruction on possession of less than 35 grams of marijuana.

The defendant argued that because the marijuana was found in two locations in the car, the evidence did not prove he possessed all of the marijuana.

Unlike *State v. Beck*, 849 SW2d 668 (Mo.App. 1993), where there was testimony that marijuana belonged to both a defendant and a passenger, this case had no affirmative evidence from which the jury reasonably could have inferred the defendant possessed only the marijuana found under his jacket and not that found under a passenger seat.

State v. Juan Mercado Jr.
No. 19050
Mo.App., S.D., Oct. 6, 1994)

There was insufficient evidence to convict the defendant of second-degree drug trafficking.

The only direct evidence linking the defendant with drugs was that he was a passenger in a van and had been helping the owner drive. The marijuana was not visible upon entering the van. It was concealed by wall panels held in place by screws.

Marijuana or an odor masker could not be smelled. When the officer stopped the van, the defendant was lying on the rear seat. There was about three feet between the edge of the seat and the loose panel that the officer later discovered. The officer got within six inches of a loose edge of the panel before he smelled marijuana.

HOT PURSUIT

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That new statute, Section 544.157, gives local law enforcement officers the power to leave their jurisdiction to pursue and arrest a fleeing suspect who committed a crime in their jurisdiction. But in *Abbott,* the incident occurred prior to the new statute and, therefore, would not be affected by the ruling.

More important, the officer was not going into another county to make an **arrest**, but just to **investigate**. The officer observed activity that made him suspicious, but did not necessarily give him probable cause to make an arrest. The hot- pursuit statute gives officers authority to pursue outside their jurisdiction **only** to make an arrest (or to issue a citation based on probable cause).

Because of this, the AG's Office continues to encourage the creation of mutual-aid agreements between jurisdictions and the issuance of deputy commissions to municipal officers when a sheriff deems it appropriate. These are the only mechanisms available for officers to "expand" their authority beyond their geographic jurisdictions in non-hot-pursuit situations.

Staff size determines OT compensation

Department size determines whether police officers receive overtime compensation, according to federal law.

Police departments with fewer than five full-time officers are not required to provide compensation.

However, larger departments with five or more full-time officers are required to pay compensation. Officers are given two choices:

- They are paid at least time-and-a-half for each hour of overtime accumulated in a 40-hour workweek **(See clarification in May 1995 Front Line.)**, or
- They are given at least time-and-a-half off for each hour of overtime. There must be a prior agreement between the department and an officer or a representative of the officers stating they will take comp time.

The law caps comp time at 12 weeks, and also requires departments to pay for accrued comp time when an officer is terminated.

Officers on call at the station, or restricted so that they can't use the time for their own purposes, will be paid for that time. Officers who leave the station, but have to leave word at their home or the station of their whereabouts, are not working on call and need not be paid.

Officers are not considered on call if they carry a beeper, which allows them to leave the station or their home.

Also, off-duty officers required to return for an emergency are not on call.

The law also states that officers should be allowed to use comp time as long as it does not disrupt operations.

Ruling on traffic stops a plus for officers

A ruling by the entire 8th Circuit Court of Appeals makes a search legal in *United States v. Bloomfield* and allows police officers flexibility in questioning motorists on issues other than those pertaining to a traffic stop.

The Nov. 16 ruling reverses an earlier opinion by a panel of the same court that said the search was unconstitutional.

The panel also had suggested that officers could not question motorists unless the questions were related to the purpose of the stop.

The Missouri Court of Appeals, Southern District, also has issued an excellent opinion clarifying many of the issues dealing with traffic stops, drug interdiction and the scope of investigation allowed by police officers.

In *State v. William Joyce,* No. 18633 (Mo.App., S.D. Sept. 14, 1994), a trooper had stopped a car for going 67 in a 55-mph zone in Springfield. The two occupants were

Bloomfield ruling favorable for officers; state appeals court clarifies what questions can be asked during traffic stops

nervous and talking loudly and rapidly. They were driving to the East Coast for a skiing trip, but each gave different destinations. When the defendant refused permission to search, a drug dog was called in, which detected almost 60,000 grams of marijuana.

Judge Charles Blackmar, a retired Missouri Supreme Court judge sitting on the appellate court as a senior judge, addressed many of the issues that have caused confusion among officers attempting to interdict drugs using traffic stops.

The court said that according to Missouri law, officers may question a motorist about issues beyond the traffic stop when officers believe other criminal activity is involved.

The court also authorized the brief detention of the defendant while waiting for the drug dog because the officer had reasonable suspicion to believe drug trafficking was involved.

The court also discussed the proper qualifications for using a drug dog, and confirmed that Interstate 44 is a well-recognized corridor for drugs and that the subjective intent of a police officer in making a traffic stop is irrelevant as long as the officer had a proper basis for making the stop, such as speeding.

This opinion addresses many of the issues that judges, prosecutors and officers have been grappling with and —the AG's Office believes — makes it clear police officers can and should be vigilant during traffic stops and can investigate beyond the initial stop when they have reasonable suspicion.

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FRONT LINE REPORT

AG's opinion: Police incident reports are open

Attorney General **Jay Nixon** issued an opinion that said recent changes in the state Sunshine Law do not close public and media access to police incident reports.

In the 1994 session, lawmakers classified police investigative reports as closed records until an arrest was made. That left open the question whether incident reports were closed too.

"The public is entitled to basic crime information — what crime was committed and generally where it occurred," Nixon said.

The opinion states that police **incident** reports are different from police **investigative** reports. It concludes that incident reports are public records with two exceptions:

- Information received by telephone using the emergency number "911."
- A victim's name and address when the victim can identify the assailant and the assailant is still at large.

The 1994 statutory change in effect did not change the previous right of access to police incident reports.

The opinion also clarifies the law about the status of police **investigative** reports **after** an arrest has been made.

An investigative report does not automatically become open once an arrest has been made, according to the opinion.

Such a rule could prejudice the ability to successfully prosecute a criminal and also prejudice the ability of a defendant to get a fair trial.

For example, pretrial publicity in the O.J. Simpson case has made it difficult to find an impartial jury for him.

Investigative report disclosure is governed by the Missouri Rules of Criminal Procedure developed by the state Supreme Court.

Copies of the complete opinion can be obtained by contacting the AG's Office at 314-751-3321.